

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

DAVID PRIEST,

Plaintiff,

v.

BENTLEY, et al.,

Defendants.

No. 2: 21-cv-0058 TLN KJN P

FINDINGS AND RECOMMENDATIONS

I. Introduction

Plaintiff is a state prisoner, proceeding without counsel, with a civil rights action pursuant to 42 U.S.C. § 1983. Pending before the court is defendants' supplemental summary judgment motion. (ECF No. 75.) For the reasons stated herein, the undersigned recommends that defendants' supplemental summary judgment motion be granted.

II. Legal Standards for Summary Judgment

Summary judgment is appropriate when it is demonstrated that the standard set forth in Federal Rule of Civil Procedure 56 is met. "The court shall grant summary judgment if the movant shows that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(a).

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1 Under summary judgment practice, the moving party always bears
2 the initial responsibility of informing the district court of the basis
3 for its motion, and identifying those portions of “the pleadings,
4 depositions, answers to interrogatories, and admissions on file,
5 together with the affidavits, if any,” which it believes demonstrate
6 the absence of a genuine issue of material fact.

7 Celotex Corp. v. Catrett, 477 U.S. 317, 323 (1986) (quoting then-numbered Fed. R. Civ. P.
8 56(c)). “Where the nonmoving party bears the burden of proof at trial, the moving party need
9 only prove that there is an absence of evidence to support the non-moving party’s case.” Nursing
10 Home Pension Fund, Local 144 v. Oracle Corp. (In re Oracle Corp. Sec. Litig.), 627 F.3d 376,
11 387 (9th Cir. 2010) (citing Celotex Corp., 477 U.S. at 325); see also Fed. R. Civ. P. 56 advisory
12 committee’s notes to 2010 amendments (recognizing that “a party who does not have the trial
13 burden of production may rely on a showing that a party who does have the trial burden cannot
14 produce admissible evidence to carry its burden as to the fact”). Indeed, summary judgment
15 should be entered, after adequate time for discovery and upon motion, against a party who fails to
16 make a showing sufficient to establish the existence of an element essential to that party’s case,
17 and on which that party will bear the burden of proof at trial. Celotex Corp., 477 U.S. at 322.
18 “[A] complete failure of proof concerning an essential element of the nonmoving party’s case
19 necessarily renders all other facts immaterial.” Id. at 323.

20 Consequently, if the moving party meets its initial responsibility, the burden then shifts to
21 the opposing party to establish that a genuine issue as to any material fact actually exists. See
22 Matsushita Elec. Indus. Co. v. Zenith Radio Corp., 475 U.S. 574, 586 (1986). In attempting to
23 establish the existence of such a factual dispute, the opposing party may not rely upon the
24 allegations or denials of its pleadings, but is required to tender evidence of specific facts in the
25 form of affidavits, and/or admissible discovery material in support of its contention that such a
26 dispute exists. See Fed. R. Civ. P. 56(c); Matsushita, 475 U.S. at 586 n.11. The opposing party
27 must demonstrate that the fact in contention is material, i.e., a fact that might affect the outcome
28 of the suit under the governing law, see Anderson v. Liberty Lobby, Inc., 477 U.S. 242, 248
(1986); T.W. Elec. Serv., Inc. v. Pacific Elec. Contractors Ass’n, 809 F.2d 626, 630 (9th Cir.
1987), and that the dispute is genuine, i.e., the evidence is such that a reasonable jury could return

1 a verdict for the nonmoving party, see Wool v. Tandem Computers, Inc., 818 F.2d 1433, 1436
2 (9th Cir. 1987), overruled in part on other grounds, Hollinger v. Titan Capital Corp., 914 F.2d
3 1564, 1575 (9th Cir. 1990).

4 In the endeavor to establish the existence of a factual dispute, the opposing party need not
5 establish a material issue of fact conclusively in its favor. It is sufficient that “the claimed factual
6 dispute be shown to require a jury or judge to resolve the parties’ differing versions of the truth at
7 trial.” T.W. Elec. Serv., 809 F.2d at 630. Thus, the “purpose of summary judgment is to ‘pierce
8 the pleadings and to assess the proof in order to see whether there is a genuine need for trial.’”
9 Matsushita, 475 U.S. at 587 (quoting Fed. R. Civ. P. 56(e) advisory committee’s note on 1963
10 amendments).

11 In resolving a summary judgment motion, the court examines the pleadings, depositions,
12 answers to interrogatories, and admissions on file, together with the affidavits, if any. Fed. R.
13 Civ. P. 56(c). The evidence of the opposing party is to be believed. See Anderson, 477 U.S. at
14 255. All reasonable inferences that may be drawn from the facts placed before the court must be
15 drawn in favor of the opposing party. See Matsushita, 475 U.S. at 587; Walls v. Central Costa
16 County Transit Authority, 653 F.3d 963, 966 (9th Cir. 2011). Nevertheless, inferences are not
17 drawn out of the air, and it is the opposing party’s obligation to produce a factual predicate from
18 which the inference may be drawn. See Richards v. Nielsen Freight Lines, 602 F. Supp. 1224,
19 1244-45 (E.D. Cal. 1985), aff’d, 810 F.2d 898, 902 (9th Cir. 1987). Finally, to demonstrate a
20 genuine issue, the opposing party “must do more than simply show that there is some
21 metaphysical doubt as to the material facts. . . . Where the record taken as a whole could
22 not lead a rational trier of fact to find for the nonmoving party, there is no ‘genuine issue for
23 trial.’” Matsushita, 475 U.S. at 586 (citation omitted).

24 By notice provided on September 24, 2021 and December 22, 2022 (ECF Nos. 28, 73-3),
25 plaintiff was advised of the requirements for opposing a motion brought pursuant to Rule 56 of
26 the Federal Rules of Civil Procedure. See Rand v. Rowland, 154 F.3d 952, 957 (9th Cir. 1998)
27 (*en banc*); Klinge v. Eikenberry, 849 F.2d 409 (9th Cir. 1988).

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1 III. Plaintiff's Claims

2 *Background*

3 This action proceeds on plaintiff's original complaint as to defendants Kuersten and
4 Sanchez. (ECF No. 1.) On March 30, 2021, service of process was returned unexecuted on
5 defendant Bentley because he is deceased. (ECF No. 19.) On November 3, 2021, defendant
6 Bentley was dismissed pursuant to Federal Rule of Civil Procedure 25. (ECF Nos. 30, 34.)

7 This action proceeds on the following claims alleging violation of plaintiff's Eighth
8 Amendment right to adequate medical care: 1) on July 19, 2018, defendant Sanchez failed to
9 perform a physical examination of plaintiff and failed to provide adequate pain medication; 2)
10 defendant Kuersten denied plaintiff's request for an MRI; 3) defendants Kuersten and Sanchez
11 denied plaintiff's request for a wheelchair; and 5) defendants Kuersten and Sanchez failed to
12 place a medical hold on plaintiff to prevent transfer to another institution while plaintiff was in
13 the middle of the medical evaluation process. (ECF No. 70 at 6.)

14 On August 22, 2022, defendants filed a summary judgment motion addressing all of
15 plaintiff's claims, except for the claim alleging that defendants Kuersten and Sanchez failed to
16 place a medical hold on plaintiff to prevent his transfer. (ECF No. 64.) On November 2, 2022,
17 the undersigned recommended that defendants' summary judgment motion be granted. (ECF No.
18 70.) The undersigned also granted defendants thirty days to file a supplemental summary
19 judgment motion addressing plaintiff's claim alleging defendants' failure to place a medical hold.
20 (Id.)

21 On February 8, 2023, the Honorable Troy L. Nunley adopted the November 2, 2022
22 findings and recommendations. (ECF No. 81.)

23 On December 22, 2022, defendants filed a supplemental summary judgment motion.
24 (ECF No. 75.) On January 26, 2023, plaintiff filed an opposition. (ECF No. 80.) On February
25 10, 2023, defendants filed a reply. (ECF No. 82.)

26 *Plaintiff's Allegations*

27 The undersigned herein sets forth the allegations in plaintiff's complaint that are relevant
28 to plaintiff's remaining claim.

1 Plaintiff alleges that on July 18, 2018, at 1000 hours, plaintiff loaded mattresses onto a
2 flatbed trailer as part of his prison work assignment. (ECF No. 1 at 3.) While loading the
3 mattresses, plaintiff fell to the ground, injuring his neck, back and hip. (Id. at 4.) The Quad
4 Officer asked if plaintiff was “alright.” (Id.) Plaintiff responded that he hurt his back. (Id.) The
5 Quad Officer refused to file an injury/incident report or refer plaintiff to the medical department
6 for evaluation. (Id.)

7 On July 18, 2018, at 1300 hours, plaintiff assisted the facility store manager with the
8 loading/bagging of inmate canteen orders. (Id.) This task involved plaintiff using his back
9 muscles. (Id.) While performing this task, plaintiff heard his back pop and experienced
10 increasing back pain. (Id.)

11 On July 18, 2018, at 2100 hours, plaintiff walked to his housing unit, carrying a bag of
12 canteen items. (Id.) Plaintiff fell into an open ditch. (Id.) This fall “compounded the earlier
13 back, neck and hip injury.” (Id.) Correctional Officer Santos helped plaintiff up and escorted
14 plaintiff to his housing unit. (Id.)

15 On October 11, 2018, plaintiff was seen by Dr. Williams via teleconference. (Id.)
16 Plaintiff told Dr. Williams that he fell off the flatbed trailer and that his request for an MRI was
17 denied. (Id.) Dr. Williams had a nurse perform a physical examination of plaintiff. (Id.) Dr.
18 Williams told plaintiff that he would submit a recommendation to Dr. Bentley that plaintiff
19 receive an MRI, asap. (Id.) Dr. Williams told plaintiff that once the MRI was done, Dr. Bentley
20 would reschedule plaintiff to have another appointment with Dr. Williams. (Id.)

21 Plaintiff had the MRI on November 23, 2018. (Id. at 8.) On November 27, 2018, a doctor
22 pulled up plaintiff’s medical file and MRI and told plaintiff that he needed an operation because
23 his back was “toast.” (Id.)

24 On December 4, 2018, plaintiff was transferred to the California Substance Abuse
25 Treatment Facility (“SATF”). (Id.) The mode of transportation was a standard van. (Id.) Due to
26 his back problems, plaintiff suffered pain during the transport. (Id. at 9-10.) Plaintiff alleges that
27 the van had no wheelchair lift or wheelchair security features. (Id. at 9.)

28 On December 12, 2018, plaintiff had a spinal operation. (Id. at 10.)

1 Plaintiff alleges that despite his medical problems, discussed above, no defendant placed a
2 medical hold on plaintiff to prevent his transfer to another institution while plaintiff was in the
3 middle of the medical evaluation process. (Id. at 8.)

4 IV. Legal Standard for Eighth Amendment Claim Alleging Inadequate Medical Care

5 Where a prisoner's Eighth Amendment claim arises in the context of medical care,
6 including mental health care, the prisoner must allege and prove "acts or omissions sufficiently
7 harmful to evidence deliberate indifference to serious medical needs." Estelle v. Gamble, 429
8 U.S. 97, 106 (1976). An Eighth Amendment medical claim has two elements: "the seriousness of
9 the prisoner's medical need and the nature of the defendant's response to that need." McGuckin
10 v. Smith, 974 F.2d 1050, 1059 (9th Cir. 1992), overruled on other grounds by WMX Techs., Inc.
11 v. Miller, 104 F.3d 1133 (9th Cir. 1997) (en banc).

12 A medical need is serious "if the failure to treat the prisoner's condition could result in
13 further significant injury or the 'unnecessary and wanton infliction of pain.'" McGuckin, 974
14 F.2d at 1059 (quoting Estelle, 429 U.S. at 104). Indications of a serious medical need include
15 "the presence of a medical condition that significantly affects an individual's daily activities." Id.
16 at 1059-60. By establishing the existence of a serious medical need, a prisoner satisfies the
17 objective requirement for proving an Eighth Amendment violation. Farmer v. Brennan, 511 U.S.
18 825, 834 (1994).

19 If a prisoner establishes the existence of a serious medical need, he must then show that
20 prisoner officials responded to the serious medical need with deliberate indifference. See Farmer,
21 511 U.S. at 834. In general, deliberate indifference may be shown when prison officials deny,
22 delay, or intentionally interfere with medical treatment, or may be shown by the way in which
23 prison officials provide medical care. Hutchinson v. United States, 838 F.2d 390, 393-94 (9th
24 Cir. 1988).

25 Before it can be said that a prisoner's civil rights have been abridged with regard to
26 medical care, "the indifference to his medical needs must be substantial. Mere 'indifference,'
27 'negligence,' or 'medical malpractice' will not support this cause of action." Broughton v. Cutter
28 Laboratories, 622 F.2d 458, 460 (9th Cir. 1980) (citing Estelle, 429 U.S. at 105-06); see also

1 Toguchi v. Soon Hwang Chung, 391 F.3d 1051, 1057 (9th Cir. 2004) (“Mere negligence in
2 diagnosing or treating a medical condition, without more, does not violate a prisoner’s Eighth
3 Amendment rights.”); McGuckin, 974 F.2d at 1059 (same). Deliberate indifference is “a state of
4 mind more blameworthy than negligence” and “requires ‘more than ordinary lack of due care for
5 the prisoner’s interests or safety.’” Farmer, 511 U.S. at 835.

6 A delay in medical treatment does not violate the Eighth Amendment unless that delay
7 causes further harm. McGuckin, 974 F.2d at 1060.

8 Finally, mere differences of opinion between a prisoner and prison medical staff or
9 between medical professionals as to the proper course of treatment for a medical condition do not
10 give rise to a § 1983 claim. See Toguchi, 391 F.3d at 1058.

11 V. Discussion

12 A. Plaintiff’s Objections to Defendants’ Evidence

13 In support of their statement of undisputed facts, defendants submitted the declarations of
14 defendant Sanchez, defense counsel and medical expert Dr. Feinberg (ECF Nos. 75-4, 75-5, 75-
15 7.) In his opposition, plaintiff raises objections to these declarations. (ECF No. 80.) The
16 undersigned addresses plaintiff’s objections herein.

17 *Defense Counsel’s Declaration*

18 In his declaration defense counsel states, in relevant part,

19 I make the following declarations of facts based upon my own
20 knowledge, as explained below. If called, I can testify competently
21 to the facts contained in this declaration in support of defendants’
supplemental motion for summary judgment.

22 Attached hereto as Exhibit A is a true and correct copy of an Inmate
23 Classification Committee Review conducted at California State
Prison-Solano concerning plaintiff David Priest dated November 14,
2018.

24 (ECF No. 75-4 at 2.)

25 Attached to defense counsel’s declaration is a declaration by J. Barba, Litigation Office,
26 California Substance Abuse and Treatment Facility and State Prison Corcoran. (Id. at 4.) J.
27 Barba states that they are the authorized custodian of records and have the authority to certify
28 these records as true and correct. (Id.) J. Barba states that the original records, of which copies

1 are enclosed, were prepared by the personnel of this business/agency in the ordinary course of
2 doing business at or near the time of the act, condition or event of which they reflect. (Id.) J.
3 Barba identifies these records as being from the Electronic Record Management Systems
4 (“ERMS”) file and the Strategic Offender Management System (“SOMS”) file. (Id.)

5 Attached to J. Barba’s declaration is the copy of the Inmate Classification Committee
6 Review conducted at California State Prison-Solano concerning plaintiff David Priest dated
7 November 14, 2018. (Id. at 5-8.)

8 In his opposition, plaintiff argues that the defense counsel’s declaration did not properly
9 authenticate the Inmate Classification Committee Review record attached to his declaration
10 because defense counsel has no personal knowledge of the authenticity of this record. (ECF No.
11 80 at 1-2.) The undersigned finds that the declaration of J. Barba, discussed above, properly
12 authenticates the Inmate Classification Committee Review record. See Fed. R. Evid. 803(6)
13 (addressing authentication of records of a regularly conducted activity). Accordingly, plaintiff’s
14 objections to the authentication of the Inmate Classification Committee Review record are
15 overruled.

16 *Defendant Sanchez’s Declaration*

17 Plaintiff argues that the declaration of J. Sanchez is not properly signed. (ECF No. 80 at
18 2.) Local 131(f) contains the standard for a non-attorney’s electronic signature:

19 Documents that are required to be signed by a person who is not the
20 attorney of record in a particular action (verified pleadings,
21 affidavits, papers authorized to be filed electronically by persons in
22 pro per, etc.), may be submitted in electronic format bearing a “/s/”
and the person’s name on the signature line along with a statement
that counsel has a signed original, e.g., “/s/ John Doe (original
signature retained by attorney Mary Roe.”

23 Local Rule 131(f).

24 Defendant Sanchez’s electronic signature in her declaration contains only her typed name.
25 (ECF No. 75-5 at 3.) Therefore, defendant Sanchez’s electronic signature does not comply with
26 Local Rule 131(f) because it does not contain “/s/” or a statement that counsel has a signed
27 original. (Id.)

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1 In the reply to plaintiff's opposition, defendants admit that defendant Sanchez's
2 declaration "does not precisely comport with the requirements" of Local Rule 131(f). (ECF No.
3 82 at 3-4.) Defendants argue that the failure to comply with Local Rule 131(f) is not a basis to
4 disregard defendant Sanchez's declaration. (*Id.* at 4.) Defendants also argue that plaintiff failed
5 to comply with Local Rule 131(g), which provides that a party who disputes the authenticity of an
6 electronically filed document with a non-attorney signature must file an objection and request for
7 the document to be stricken within twenty-one days of receiving the Notice of Electronic Filing.
8 Defendants appear to claim that plaintiff failed to request that the declaration be stricken within
9 twenty-one days of receiving the declaration.

10 While plaintiff did not file a motion to strike defendant Sanchez's declaration, the
11 undersigned finds that plaintiff properly raised his objections to the declaration in his opposition.
12 The undersigned also finds that plaintiff's objections are timely. In his opposition, plaintiff states
13 that he received defendants' summary judgment motion on January 4, 2023. (ECF No. 80 at 1.)
14 Pursuant to the mailbox rule, plaintiff filed his opposition on January 22, 2023. (ECF No. 80 at
15 6.) Therefore, plaintiff filed his opposition within twenty-one days of receiving the declaration.

16 The undersigned orders defendant Sanchez's declaration stricken for failing to comply
17 with Local Rule 131(g).¹

18 *Dr. Feinberg's Declaration*

19 Defendants submitted the declaration of Dr. Feinberg. (ECF No. 75-7.) In his
20 declaration, Dr. Feinberg offers his expert medical opinion regarding plaintiff's claim alleging
21 that defendants failed to place a medical hold. (*Id.*) Dr. Feinberg describes his qualifications as a
22 medical expert in his declaration.² (*Id.* at 1-2.) Dr. Feinberg states that his expert medical
23 opinion is based on his review of plaintiff's complaint, the court's November 1, 2022 order, the

24
25 ¹ Because the undersigned herein finds that defendants' supplemental summary judgment motion
26 should be granted without consideration of defendant Sanchez's declaration, the undersigned does
not grant defendants leave to file a properly signed declaration by defendant Sanchez.

27 ² In support of Dr. Feinberg's declaration submitted in support of defendants' first summary
28 judgment motion, defendant also submitted a document describing Dr. Feinberg's education,
professional experience and highlights of qualifications. (ECF No. 64-3 at 2.)

1 California Correctional Health Care Services (“CCHCS”) Health Care Department Operations
2 Manual (“HCDOM”), and his analysis of the medical records kept by CCHCS documenting the
3 medical care provided to plaintiff. (*Id.* at 3.)

4 In his opposition, plaintiff refers to arguments made in his opposition to defendants’ first
5 summary judgment motion, where he objected to defendant Feinberg’s declaration submitted in
6 support of that motion. In his opposition to defendants’ first summary judgment motion, plaintiff
7 challenged Dr. Feinberg’s qualifications as an expert because he did not personally witness any of
8 the actions complained of. (ECF No. 67 at 6.) Plaintiff argued that Dr. Feinberg’s declaration
9 was not admissible because it was not based on personal knowledge. (*Id.*)

10 Federal Rule of Evidence 702 provides,

11 A witness who is qualified as an expert by knowledge, skill,
12 experience, training, or education may testify in the form of an
opinion or otherwise if:

13 (a) the expert’s scientific, technical, or other specialized knowledge
14 will help the trier of fact to understand the evidence or to determine
a fact in issue;

15 (b) the testimony is based on sufficient facts or data;

16 (c) the testimony is the product of reliable principles and methods;
17 and

18 (d) the expert has reliably applied the principles and methods to the
facts of the case.

19 Fed. R. Evid. 702.

20 Rule 702 “establishes a standard of evidentiary reliability.” Daubert v. Merrell Dow
21 Pharms., Inc., 509 U.S. 579, 590 (1993)

22 After reviewing Dr. Feinberg’s declaration, the undersigned finds that Dr. Feinberg is
23 qualified to offer his expert medical opinion regarding the remaining issue in this action based on
24 his review of plaintiff’s medical records. Dr. Feinberg is not required to have personally
25 participated in plaintiff’s treatment to be qualified as an expert regarding plaintiff’s medical care.
26 Accordingly, plaintiff’s objections to Dr. Feinberg’s declaration are overruled.

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1 B. Undisputed Facts

2 Defendants filed a statement of undisputed facts in support of the supplemental summary
3 judgment motion. (ECF No. 75-1.) Plaintiff did not file a response to defendants' statement of
4 undisputed facts, as required by Local Rule 260(b).

5 The undersigned herein sets forth defendants' statement of undisputed facts, referencing
6 the evidence cited by defendants in support of each undisputed fact.³

7 *Undisputed Fact No. 1:* Plaintiff David Priest, a California Department of Corrections
8 and Rehabilitation ("CDCR") prisoner, was housed at California State Prison-Solano ("Solano")
9 during relevant portions of the events alleged in his complaint. (ECF No. 75-1 at 2 (defendants'
10 undisputed fact no. 1 citing plaintiff's complaint (ECF No. 1)).)

11 *Undisputed Fact No. 2:* Defendant Sanchez was a Nurse Practitioner at Solano during
12 relevant portions of the events in the complaint. In support of this fact, defendants cite the
13 stricken declaration of defendant Sanchez. (ECF No. 75-1 at 2.) However, Dr. Feinberg
14 identifies defendant Sanchez as a Nurse Practitioner in his declaration submitted in support of
15 defendants' supplemental summary judgment motion. (ECF No. 75-7 at 4.) Although plaintiff
16 mistakenly refers to defendant Sanchez as "Dr. Sanchez" in the complaint (ECF No. 1 at 1),
17 plaintiff does not dispute that defendant Sanchez is a Nurse Practitioner. Accordingly, based on
18 Dr. Feinberg's declaration, the undersigned finds that it is undisputed that defendant Sanchez was
19 a Nurse Practitioner at all relevant times.

20 *Undisputed Fact No. 3:* Defendant M. Kuersten was the Chief Medical Executive
21 ("CME") at Solano during relevant portions of events in the complaint. Defendant Kuersten did
22 not serve as plaintiff's primary care physician ("PCP"); rather his treating physician was Dr.
23 Bentley. (ECF No. 75-1 at 2 (defendants; undisputed fact no. 3 citing defendant Kuersten's
24 declaration (ECF No. 75-6 at 2)).)

25 *Undisputed Fact No. 4:* Plaintiff alleges in his complaint that he suffered a back injury in
26 July 2018 while working at Solano, and that defendants were involved in treating his back

27 _____
28 ³ The undersigned does not include defendants' undisputed facts based on defendant Sanchez's
stricken declaration.

1 condition over the following months. (ECF No. 75-1 at 2 (defendants' undisputed fact no. 4
2 citing plaintiff's complaint (ECF No. 1 at 4-7)).)

3 In undisputed fact no. 4, defendants also state that plaintiff received care for his back
4 condition from Solano medical staff during that time, including some care from defendant
5 Sanchez, while defendant Kuersten performed administrative reviews. (ECF No. 75-2 at 2.) In
6 support of this claim, defendants cite Dr. Feinberg's declaration submitted in support of
7 defendants' first summary judgment motion. (See ECF No. 64-2 at §§9-30.)

8 *Undisputed Fact No. 5:* On October 25, 2018, plaintiff saw Dr. Bentley for follow-up of
9 his consultation with a physiatrist regarding his back condition. Based on the physiatrist's
10 observations, Dr. Bentley submitted a request for an MRI of plaintiff's lumbar spine. (ECF No.
11 75-1 at 2 (defendants' undisputed fact no. 5 citing defendant Kuersten's declaration (ECF No. 75-
12 6 at 2)).)

13 *Undisputed Fact No. 6:* On October 26, 2018, defendant Kuersten approved the request
14 for an MRI of plaintiff's lumbar spine based on the findings and recommendations by the
15 physiatrist and the lack of improvement of plaintiff's symptoms over a period of time. (ECF No.
16 75-1 at 2-3 (defendants' undisputed fact no. 6 citing defendant Kuersten's declaration (ECF No.
17 75-6 at 2)).)

18 *Undisputed Fact No. 7:* On or about November 7, 2018, plaintiff informed Solano
19 custody staff that he had safety concerns due to a drug debt owed to other inmates, and he was
20 placed in Administrative Segregation Unit housing for his safety. (ECF No. 75-1 at 3
21 (defendants' undisputed fact no. 7 citing ECF No. 75-4 at 6 (Inmate Classification Committee
22 Review conducted at Solano concerning plaintiff dated November 7, 2018)).)

23 *Undisputed Fact No. 8:* A subsequent Institutional Classification Committee ("ICC")
24 review regarding plaintiff's safety concerns noted that plaintiff requested to be housed at
25 California Training Facility ("CTF") or Substance Abuse Training Facility ("SATF"). The ICC
26 recommended that plaintiff receive a non-adverse transfer to CTF or SATF. (ECF No. 75-1 at 3
27 (defendants' undisputed fact no. 8 citing ECF No. 75-4 at 6-7 (Inmate Classification Committee
28 review conducted at Solano concerning plaintiff dated November 14, 2018)).)

1 *Undisputed Fact No. 9:* At the ICC hearing on November 14, 2018, plaintiff appeared to
2 agree with the committee's decision and he stated, "Thank you." (ECF 75-1 at 3 (defendants'
3 undisputed fact no. 9 citing ECF No. 75-4 at 6-7 (Inmate Classification Committee review
4 conducted at Solano concerning plaintiff dated November 14, 2018))).)

5 *Undisputed Fact No. 10:* As relevant to defendant's supplemental summary judgment
6 motion, plaintiff alleges that despite his ongoing medical appointments, no defendant placed a
7 medical hold on plaintiff while he was in the middle of the evaluation process, including awaiting
8 the outcome of the MRI concerning his lower back condition. (ECF No. 75-1 at 3 (defendants'
9 undisputed fact no. 10 citing plaintiff's complaint (ECF No. 1), plaintiff's opposition to
10 defendants' first summary judgment motion (ECF No. 67))).)

11 *Undisputed Fact No. 11:* Section 3.1.9 of the California Correctional Health Care System
12 Health Care Department Operations Manual ("HCDOM") reviews the procedures for health care
13 transfers of inmate patients. Section 1.2.14 of the CCHCS HCDOM explains the Medical
14 Classification Chrono and its role in incorporating patients' medical needs with placement
15 decisions, including medical holds. (ECF No. 75-1 at 3 (defendants' undisputed fact no. 11 citing
16 Dr. Feinberg's declaration (ECF No. 75-7 at 3, 4))).)

17 *Undisputed Fact No. 12:* The Temporary Medical Hold Process is contained in Appendix
18 1, subsection (b)(1) of the CCHCS HCDOM attached to Dr. Feinberg's declaration. This section
19 states, "A Temporary Medical Hold is used when a patient requires medically necessary health
20 care services, and it is medically prudent to provide these services at the institution where the
21 patient is currently housed." In section (b)(1)(A), examples are given of patients who should be
22 reviewed for potential medical holds. Of those, only example (A)3, "Patients undergoing a
23 diagnostic workup[.]" is applicable to plaintiff's situation in November and December 2018.
24 (ECF No. 75-1 at 3-4 (defendants' undisputed fact no. 7 citing Dr. Feinberg's declaration (ECF
25 No. 75-7 at 4) and defendant Kuersten's declaration (ECF No. 75-6 at 3); see also ECF No. 75-7
26 at 24 (appendix discussing Temporary Medical Hold Process))).)

27 *Undisputed Fact No. 13:* The guidance concerning temporary medical holds provides
28 discretion for medical staff to determine whether or not a medical hold is necessary because the

1 patient should receive services at the institution where they are presently housed, or conversely,
2 that such services can be rendered at the patient's next institution. (ECF No. 75-1 at 4
3 (defendants' undisputed fact no. 13 citing Dr. Feinberg's declaration (ECF No. 75-7 at 4)).)

4 *Undisputed Fact No. 14:* The responsibility to place a temporary medical hold is
5 primarily the duty of a patient's PCP, working in conjunction with other medical staff, to include
6 the Receiving & Release ("R & R") Registered Nurse. (ECF No. 75-1 at 4 (defendants'
7 undisputed fact no. 14 citing Dr. Feinberg's declaration (ECF No. 75-7 at 5)).) A facility's Chief
8 Medical Officer generally plays no role in the medical hold evaluation or decision process. (ECF
9 No. 75-1 at 4 (defendants' undisputed fact no. 14 (citing defendant Kuersten's declaration (ECF
10 No. 75-6 at 4)).)

11 *Undisputed Fact Nos. 15, 16:* Defendants' undisputed fact nos. 15 and 16 are omitted
12 because they are based on defendant Sanchez's stricken declaration. (ECF No. 75-1 at 4
13 (defendants' undisputed fact nos. 15, 16).)

14 *Undisputed Fact No. 17:* The decision to prevent plaintiff's transfer to another facility, if
15 called for in a non-emergent situation, would have been made by his PCP and other designated
16 treating health care staff. (ECF No. 75-1 at 5 (defendants' undisputed fact no. 17 citing Dr.
17 Feinberg's declaration (ECF No. 75-7 at 4-5)).) Part of defendants' undisputed fact no. 17 is
18 omitted because it is based on defendant Sanchez's stricken declaration. (ECF No. 75-1 at 5
19 (defendants' undisputed fact no. 17)).)

20 *Undisputed Fact No. 18:* On November 29, 2018, plaintiff was seen by Solano medical
21 staff for a complaint of pain associated with a chest wall contusion. Plaintiff's MRI results were
22 available on November 20, 2018, and thus the attending physician, Dr. Chen, had access to the
23 imaging and reviewed them. Dr. Chen assessed plaintiff's spinal stenosis in the medical record
24 notes as follows: "1. Spinal stenosis per MRI. PT will be seen today for HEP for back." (ECF
25 No. 75-1 at 5 (defendants' undisputed fact no. 18 citing Dr. Feinberg's declaration (ECF No. 75-7
26 at 5); see also ECF No. 75-7 at 49-51 (plaintiff's medical records from November 29, 2018)).)

27 *Undisputed Fact No. 19:* Because plaintiff's MRI results had been received, medical staff
28 did not have a reason to place a medical hold on plaintiff's transfer to another institution at that

1 time. Moreover, there was no indication that a medical hold was necessary because plaintiff
2 could continue being assessed for his back condition at his next institution. The electronic health
3 record system (“EHRS”) and unit health record (“UHR”) could be accessed by medical staff at
4 that institution to evaluate plaintiff’s condition and continue a treatment plan. (ECF No. 75-1 at 5
5 (defendants’ undisputed fact no. 19 citing Dr. Feinberg’s declaration (ECF No. 75-7 at 5)).)

6 *Undisputed Fact No. 20:* If a medical hold was necessary, it would have been the
7 responsibility of Dr. Bentley to place that hold, and was not the duty of defendant Sanchez or
8 defendant Kuersten. Additionally, if the R & R Registered Nurse, upon screening plaintiff’s
9 medical record for any contraindications to transfer, had felt that the pending MRI was such a
10 contraindication, they were to communicate their concern to the PCP, not to either defendant, to
11 initiate a medical hold. (ECF No. 75-1 at 5 (defendants’ undisputed fact no. 20 citing Dr.
12 Feinberg’s declaration (ECF No. 75-7 at 5)).)

13 *Undisputed Fact No. 21:* Defendant Kuersten had no role in deciding whether or not
14 plaintiff should have a temporary medical hold placed on his transfer away from Solano. (ECF
15 No. 75-1 at 6 (defendants’ undisputed fact no. 21 citing defendant Kuersten’s declaration (ECF
16 No. 75-6 at 3)).)

17 In undisputed fact no. 21, defendants also claim that defendant Sanchez had no role in
18 deciding whether or not plaintiff should have a temporary medical hold placed on his transfer
19 away from Solano. (ECF No. 75-1 at 6.) In support of this claim, defendants cite defendant
20 Sanchez’s stricken declaration. (*Id.*) However, the undersigned finds that the declaration of Dr.
21 Feinberg also makes clear that defendant Sanchez had no role in deciding whether or not plaintiff
22 should have a temporary medical hold placed. In his declaration, Dr. Feinberg states that the
23 responsibility for placing the medical hold was on plaintiff’s PCP, Dr. Bentley and/or the R&R
24 Registered Nurse. (ECF No. 75-7 at 5.) It is clear that defendant Sanchez was not the R&R
25 Registered Nurse. Accordingly, based on Dr. Feinberg’s declaration, the undersigned finds that it
26 is undisputed that defendant Sanchez had no role in deciding whether or not plaintiff should have
27 a temporary medical hold placed prior to his transfer away from Solano.

28 *Undisputed Fact No. 22:* On December 4, 2018, plaintiff transferred to SATF. According

1 to plaintiff's Interfacility Transfer note, staff determined that a medical hold was not needed and
2 that transfer requirements, including medical clearance, were met. (ECF No. 75-1 at 6
3 (defendants' undisputed fact no. 22 citing ECF No. 75-7 (Interfacility Transfer Note)).)

4 C. Discussion

5 As stated above in undisputed fact no. 10, plaintiff alleges that defendants acted with
6 deliberate indifference by failing to place a medical hold on him while he was awaiting the
7 outcome of the MRI concerning his lower back condition. Defendants move for summary
8 judgment as to this claim on the grounds that it is undisputed that they had no role in the decision
9 about whether to place a medical hold on plaintiff's transfer while awaiting the MRI results.
10 Defendants contend that it is undisputed that temporary medical hold determinations are primarily
11 the responsibility of a PCP or particular medical staff, such as the R & R Nurse.

12 The undersigned agrees that the undisputed evidence shows that defendants Sanchez and
13 Kuersten had no role in the decision about whether to place a medical hold on plaintiff while the
14 MRI results were pending. As stated by Dr. Feinberg in his declaration, "the onus for placing the
15 medical hold would rest with plaintiff's PCP, Dr. Bentley, and not with either defendant Nurse
16 Practitioner D. Sanchez or Dr. M. Kuersten." (ECF No. 75-7 at 4.) Accordingly, defendants
17 should be granted summary judgment on the grounds that they had no role in the decision about
18 whether to place a medical hold on plaintiff while the MRI results were pending.

19 Although not directly addressed by defendants, the undersigned herein also finds that
20 there is no evidence that defendants Sanchez or Kuersten had a role in the decision about whether
21 to place a medical hold on plaintiff after the MRI results became available on November 20,
22 2018. (ECF No. 75-7 at 5.)

23 Dr. Feinberg's declaration indicates that it was the responsibility of plaintiff's PCP to
24 place a temporary medical hold after the MRI results became available. (ECF No. 75-7 at 5.) In
25 addition, as discussed herein, the R & R Nurse who reviewed plaintiff's records prior to his
26 transfer, and after the MRI results were available, also could have recommended a temporary
27 medical hold for plaintiff to his PCP.

28 Section 3.1.9(c)(3)(A) of the CCHCS HCDOM describes the Patient Transfer Process.

1 (ECF No. 75-7 at 11.) This section provides that the R & R Nurse shall “screen the health record
2 for contraindications to transfer (e.g., inpatient, medical holds, potential medical holds, dental
3 holds, specialty appointments).” (Id.) This section goes on to state that the R & R Nurse shall
4 communicate with the patient’s care team to resolve issues and concerns, and the PCP shall
5 update the Medical Classification Chrono and initiate a medical hold if necessary. (Id. at 11-12.)
6 Therefore, these regulations provide that the R & R Nurse was to communicate any concerns
7 regarding plaintiff’s transfer to plaintiff’s PCP, Dr. Bentley, after screening plaintiff’s records for
8 contraindications of transfer.

9 In his declaration, Dr. Feinberg states that the R & R Nurse, who screened plaintiff’s
10 health records prior to his transfer, determined that a medical hold for plaintiff was not needed.
11 (Id. at 5.) The December 4, 2018 Interfacility Transfer note indicates that the Registered Nurse
12 who screened plaintiff’s records determined that a medical hold was not needed and that transfer
13 requirements were met. (Id. at 46.)

14 For the reasons discussed above, the undersigned finds that defendants Kuersten and
15 Sanchez played no role in determining whether plaintiff should receive a temporary medical hold
16 after the MRI results became available.

17 In the summary judgment motion, defendants also argue that to the extent plaintiff alleges
18 that any staff improperly failed to place a medical hold on him, this is a difference of opinion
19 between plaintiff and his medical providers, and as such, cannot constitute deliberate indifference.
20 The undersigned need not reach this issue because defendants Kuersten and Sanchez should be
21 granted summary judgment on the grounds that they played no role in determining whether
22 plaintiff should receive a temporary medical hold prior to his transfer to SATF.

23 In his opposition, plaintiff contends that he was injured while being transferred from
24 Solano to SATF. (ECF No. 80 at 3-4.) Plaintiff contends that the discharge records from the
25 back surgery he received following his transfer to SATF state that he arrived at the hospital with
26 “T8-9 pathologic compression fracture with cord compression...” (Id. at 8.) Plaintiff contends
27 that because the results from the MRI and X-ray he received at Solano did not show a fracture, he
28 must have received this injury during his transport to SATF. (Id. at 3.)

1 While plaintiff claims he suffered additional back injuries during the transport to SATF
2 based on the discharge records from his surgery, the undersigned finds that plaintiff is not
3 qualified to render an opinion regarding this matter. Fed. R. Evid. 701 (layperson may not offer
4 an opinion based on scientific, technical or other specialized knowledge).

5 Plaintiff also contends that the transportation vehicle he rode in to SATF had no seatbelts,
6 harnesses, or other cushions to secure him. (Id. at 4.) Plaintiff contends that defendant Kuersten,
7 as the CME and member of the Institutional Management Committee for Solano, had to have
8 known of the conditions of the transfer vans. (Id.) Plaintiff argues, “Why did [defendant
9 Kuersten] believe that the transfer posed a little risk of harm to plaintiff?” (Id.) Plaintiff
10 contends that when defendant Kuersten saw the transfer request for plaintiff, he should have
11 placed a medical hold on plaintiff or had plaintiff transferred in a van with a wheelchair lift or
12 harness. (Id. at 5.)

13 Plaintiff provides no evidence supporting his claim that defendant Kuersten knowingly
14 allowed him to be transported to SATF in van that could not accommodate wheelchairs.
15 Moreover, defendant Kuersten’s declaration indicates that he was not involved in decisions
16 regarding plaintiff’s transfer. In his declaration, defendant Kuersten states that after his October
17 26, 2018 administrative review of the request for plaintiff’s MRI, he had no further involvement
18 in any aspect of decisions regarding plaintiff’s medical care or to place a temporary medical hold
19 that would prevent plaintiff’s transfer to another prison. (ECF No. 75-6 at 2-3.) Defendant
20 Kuersten states that any evaluations of plaintiff’s medical conditions or decisions effecting his
21 medical treatment were the responsibility of his PCP, Dr. Bentley, or line medical staff at the
22 clinics where he was seen. (Id. at 3.) Accordingly, the undersigned finds that plaintiff’s claim
23 that defendant Kuersten knowingly allowed him to be transported in a van that did not
24 accommodate his wheelchair is unsupported.⁴

25 Defendants also argue that they are entitled to qualified immunity. The doctrine of
26

27 ⁴ The undersigned observes that the Interfacility Transfer Record states that plaintiff’s condition
28 was stable, he was transported in an “ADA Van,” and that the only healthcare appliance to be
transferred with plaintiff was a walker. (ECF No. 75-7 at 46.)

1 qualified immunity protects “government officials ... from liability for civil damages insofar as
2 their conduct does not violate clearly established statutory or constitutional rights of which a
3 reasonable person would have known.” Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982). As the
4 Supreme Court has noted, qualified immunity protects “all but the plainly incompetent or those
5 who knowingly violate the law.” See Malley v. Briggs, 475 U.S. 335, 341 (1986). In evaluating
6 qualified immunity, the court must determine: (1) whether the facts, viewed in the light most
7 favorable to the plaintiff, show that the defendant’s conduct violated a constitutional right; and (2)
8 whether the right was clearly established at the time of the alleged violation such that a
9 reasonable person in the defendant’s position would have understood that his actions violated that
10 right. Saucier v. Katz, 533 U.S. 194, 201–02 (2001) (receded from in Pearson v. Callahan, 555
11 U.S. 223 (1009) (holding that while Saucier’s two step sequence for resolving government
12 official’s qualified immunity claims is often appropriate, courts may exercise their sound
13 discretion in deciding which of the two prongs should be addressed first)). If the answer to either
14 inquiry is “no,” then the defendant is entitled to qualified immunity and may not be held
15 personally liable for his or her conduct. Glenn v. Washington Cty., 673 F.3d 864, 870 (9th Cir.
16 2011).

17 Because the undersigned finds that defendants did not violate the Eighth Amendment, no
18 further discussion of qualified immunity is warranted.⁵

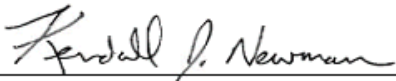
19 Accordingly, IT IS HEREBY RECOMMENDED that defendants’ supplemental summary
20 judgment motion (ECF No. 75) be granted.

21 These findings and recommendations are submitted to the United States District Judge
22 assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within fourteen days
23 after being served with these findings and recommendations, any party may file written
24 objections with the court and serve a copy on all parties. Such a document should be captioned
25 “Objections to Magistrate Judge’s Findings and Recommendations.” Any response to the

26 ⁵ Defendants point out that plaintiff’s transfer was initiated after plaintiff expressed safety
27 concerns to correctional staff. Defendants contend that plaintiff is claiming that medical staff
28 violated his Eighth Amendment rights for allegedly failing to stop a transfer that was in response
to his statements to custody staff, a transfer that plaintiff agreed to.

1 objections shall be filed and served within fourteen days after service of the objections. The
2 parties are advised that failure to file objections within the specified time may waive the right to
3 appeal the District Court's order. Martinez v. Ylst, 951 F.2d 1153 (9th Cir. 1991).

4 Dated: March 9, 2023

5 
6 KENDALL J. NEWMAN
7 UNITED STATES MAGISTRATE JUDGE
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